as "a new departure," and "of extraordinary importance," in note in 22 *L. R. A.* 577. It appears not to have been considered in any other court.

NUISANCES—STORING POWDER—LIABILITY FOR EXPLOSION.—KLEEBAUER ET UX. v. WESTERN FUSE & EXPLOSIVES CO., 71 PAC. 617 (CAL.).—A manufacturing company kept in store, powder necessary for its business, and it was exploded by the willful act of another. *Held,* that the keeping of the powder was not necessarily a nuisance, so as to render the company liable in any case to third parties injured by the explosion.

The keeping of explosives near a city has been held a nuisance *per se. Cheatham v. Shearon,* 1 Swan 213; *Coal Co. v. Glass,* 34 Ill. App. 364. The contrary has been held in *People v. Sands,* 1 Johns. 78, and with regard to a sparsely settled spot in *Dumesnil v. Dupont,* 18 B. Mon. 800. Whether it is a nuisance *per se* has been held to be a question of fact. *Heeg v. Licht,* 80 N. Y. 579; *Lounsbury v. Foss,* 80 Hun 296. In Pennsylvania a magazine may be a nuisance in a place not thickly settled if it is so situated as to be liable to injure even a few persons. *Appeal of Wier,* 74 Pa. 230; and in South Carolina if an explosion might injure the plaintiff and him alone. *Emory v. Powder Co.,* 22 S. C. 476. In Alabama, to constitute a nuisance, a magazine, wherever situated, must be negligently maintained. *Kinney v. Koopman,* 116 Ala. 310.

PARTNERSHIP NAME—USE BY SURVIVING PARTNER—GOOD WILL.—SLATER V. SLATER, 80 N. Y. SUPP. 363.—*Held,* that no right to use the firm name, except for the purpose of advertising as its successor, passes to the purchaser of the good-will of a partnership dissolved by death; and that the right to continue the business in the firm name does not remain in the surviving partner.

When the firm name is used as a trade-mark simply or the purchaser continues the business as a successor, there is no conflict as to the purchaser's right; in each case the firm name is an asset. *Levy v. Walker,* 10 Ch. Div. 436; *Honie v. Chaney,* 143 Mass. 592; *Caswell v. Hazard,* 121 N. Y. 484; *Lindl., Partn.* 447. But the English courts seem inclined to consider the continued use of a firm name a part of the good will when there is no danger of loss to the original partners; *Levy v. Walker,* 10 Ch. Div. 436; *Webster v. Webster,* 3 Swanst. 490; *Robertson v. Quiddington,* 28 Beav. 536; *Lindl., Partn.* 446; and have even gone so far as to hold that the right to do business in the firm name passed to the surviving partner as a property right. *Lewis v. Langdon,* 7 Simons 421. The decisions on the question in this country are few; but see *Fenn v. Bolles,* 7 Abb. Pr. 202, where the right did not go to surviving partner; and *Blake v. Barnes,* 26 Abb. N. C. 208, and *Mason v. Dawson,* 15 Misc. (N. Y.) 595, where it did.

PERCOLATING WATERS—DIVERSION.—STILLWATER WATER CO. v. FARMER, 93 N. W. 907 (MINN.).—Defendant diverted percolating waters from plaintiff's spring, and conducted them to the city sewer. *Held,* that a landowner may be restrained from thus wantonly wasting percolating waters which would otherwise be appropriated by the adjoining owner for a useful purpose.

A landowner may appropriate all the percolating waters in his soil providing it is done for a useful purpose. But the absolute right to use